

Environmental Protection Agency

§ 35.260

of the program costs will not be reduced in an amount greater than that authorized by the waiver.

[60 FR 371, Jan. 4, 1995]

§ 35.210 Maintenance of effort.

(a) To receive funds under section 105, an agency must expend annually for recurrent section 105 program expenditures an amount of non-Federal funds at least equal to such expenditures during the preceding fiscal year, unless the Regional Administrator, after notice and opportunity for a public hearing, determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government. In order for the Regional Administrator to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's application for grant assistance, to that agency's expenditure level in the second preceding fiscal year.

(b) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the assistance will not supplant non-Federal funds that would otherwise be available for maintaining the section 105 program.

[47 FR 44954, Oct. 12, 1982, as amended at 60 FR 372, Jan. 4, 1995]

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, or intermunicipal agency without consulting with the appropriate official designated by the Governor or Governors of the State or States affected.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and op-

portunity for a public hearing in the affected State or in one of the affected States if several are affected.

WATER POLLUTION CONTROL (SECTION 106)

§ 35.250 Purpose.

Sections 106 and 518 of the Clean Water Act authorize assistance to State and interstate agencies (as defined in section 502 of the Act) and to eligible Indian Tribes to administer programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may be eligible for funding under section 205 (g) and (j) of that Act. (See §§ 35.300 and 35.350.) Program requirements for water quality planning and management activities are provided in 40 CFR part 35, subpart G.

[47 FR 44954, Oct. 12, 1982, as amended at 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994]

§ 35.255 Maintenance of effort.

(a) To receive funds under section 106, any State or interstate agency must expend annually for recurrent section 106 program expenditures an amount of non-Federal funds at least equal to expenditures during the fiscal year ending June 30, 1971.

(b) The maintenance of effort requirement in paragraph (a) of this section shall not apply to eligible Indian Tribes.

[54 FR 14358, Apr. 11, 1989, as amended at 59 FR 13817, Mar. 23, 1994]

§ 35.260 Limitations.

(a) The Regional Administrator will not award section 106 funds to any State which does not monitor and compile, analyze, and report water quality data as described in section 106(e)(1) of the Clean Water Act. The Regional Administrator may award section 106 funds to eligible Indian Tribes even if they do not meet this requirement. However, all monitoring and analysis activities performed by a Tribe must meet the applicable quality assurance, quality control requirements as specified in 40 CFR part 31.

(b) The Regional Administrator will not award section 106 funds to any State, including any eligible Indian Tribe, which does not have authority comparable to that in section 504 of the Clean Water Act and adequate contingency plans to implement such authority.

(c) The Regional Administrator will not award section 106 funds if federally assumed enforcement as defined in section 309(a)(2) of the Clean Water Act is in effect with respect to the agency.

(d) The Regional Administrator will not award section 106 funds unless the work program submitted with the assistance application shows that the activities to be funded are coordinated, as appropriate, with activities proposed for funding under section 205 (g) and (j) of the Clean Water Act.

[47 FR 44954, Oct. 12, 1982, as amended at 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994]

§ 35.265 Awards to Indian Tribes.

(a) The Regional Administrator will not award section 106 funds to an Indian Tribe unless EPA has determined that the Indian Tribe meets the requirements set forth at 40 CFR 130.6(d) as well as the applicable limitations in 40 CFR 35.260.

(b) The Regional Administrator will not give a continuation award to any Indian Tribe unless the Tribe shows satisfactory progress in meeting its negotiated milestones and goals.

[54 FR 14358, Apr. 11, 1989, as amended at 59 FR 13817, Mar. 23, 1994]

STATE ADMINISTRATION (SECTION 205(G))

§ 35.300 Purpose.

Section 205(g) of the Clean Water Act authorizes assistance to States (as defined in section 502 of the Act) for two purposes.

(a) *Construction management assistance.* The 205(g) funds may be used for administering elements of the construction grant program under sections 201, 203, 204, and 212 of the Clean Water Act and for managing waste treatment construction grants for small communities. Construction management assistance funds may also be used for administering elements of a State's construction grant program which are im-

plemented without Federal assistance, if the Regional Administrator determines that those elements are consistent with 40 CFR part 35, subpart I. Program requirements for State construction management activities under delegation are provided in 40 CFR part 35, subparts F and I.

(b) *Permit and planning assistance.* The 205(g) funds may be used for administering permit programs under sections 402 and 404 and for administering statewide waste treatment management planning programs under section 208(b)(4) of the Clean Water Act. Some of these activities may be eligible for funding under sections 106 and 205(j) of that Act. (See §§ 35.250 and 35.350.) Program requirements for water quality management activities are provided in 40 CFR part 35, subpart G.

§ 35.305 Maintenance of effort.

To receive funds under section 205(g), a State agency must expend annually for recurrent section 106 program expenditures an amount of non-Federal funds at least equal to such expenditures during fiscal year 1977, unless the Regional Administrator determines that the reduction is attributable to a non-selective reduction of expenditures in State executive branch agencies.

§ 35.310 Limitations.

(a) The Regional Administrator will not award section 205(g) funds for construction management assistance unless there is a signed agreement delegating responsibility for administration of those activities to the State.

(b) The Regional Administrator will not award section 205(g) permit and planning assistance before awarding funds which provide for the management of a substantial portion of construction grants program. The maximum amount of permit and planning assistance a State may receive is the amount remaining in its reserve after the Regional Administrator allows for full funding of the management of the construction grant program under full delegation.

(c) The Regional Administrator will not award section 205(g) permit and planning assistance unless the work program submitted with the assistance application shows that the activities to